

American Indian Law Review

Volume 6 | Number 2

1-1-1978

Recent Federal Developments

Follow this and additional works at: <https://digitalcommons.law.ou.edu/ailr>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Recent Federal Developments, 6 AM. INDIAN L. REV. 443 (1978),
<https://digitalcommons.law.ou.edu/ailr/vol6/iss2/9>

This Recent Developments is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

RECENT FEDERAL DEVELOPMENTS

Beginning with this issue, a separate section devoted exclusively to summaries of the more important and far-reaching federal law emerging from Congress and various administrative agencies that affect Indians, has been included. Separate treatment for this area is warranted in light of the ever-increasing promulgation of legislation and regulations by the federal government.

This section is not designed for critical evaluation of any particular statute or regulation, but rather to provide our readers a summary of recent federal law, including citations to the effective text and other information helpful for more detailed examination.

REGULATIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Indian Health Service: Title 42 C.F.R. Part 36

Contract Health Service: Subpart C

43 Fed. Reg. 34650, August 4, 1978

This final rule reestablishes contract health service delivery areas, uniform eligibility, notice, and related requirements for contract health service delivery to eligible Indians and other beneficiaries.

Effective date: August 4, 1978

Amends: 41 C.F.R. §§ 36.21 (definitions), 36.22 (establishment of contract health service delivery areas), 36.23 (persons to whom service provided), 36.24 (authorization), 36.25 (reconsideration and appeals).

Preference in Employment: Subpart E

43 Fed. Reg. 29783, July 11, 1978

This final rule defines the term "Indian" for purposes of Indian preference in employment with the Indian Health Service so as to be congruent with the definition adopted by the Department of Interior. Persons currently employed by the Indian Health Service eligible for preference under the previous rules and procedures retain their preference eligibility so long as they remain continuously employed in positions subject to Indian preference regulations.

Effective date: February 8, 1978

Establishes: Subpart E

Social Security Administration: Title 20 C.F.R. Part 416

Exclusions from Income and Resources

43 Fed. Reg. 18205, April 28, 1978

This proposed rule excludes from consideration, as income or a

resource, receipts derived from certain submarginal lands conveyed to Indian tribes and held in trust by the United States when such receipts are distributed to individual tribal members.
Establishes: Section 416.1146(n); Section 416.1236(a)(13)

DEPARTMENT OF LABOR

Administration and Management: Title 41 C.F.R. chapter 29

Procurement Regulations:

43 Fed. Reg. 26042, June 16, 1978

This proposed rule amends the Department of Labor Procurement Regulations to add a new part delineating the federal administrative standards for making, administering, and closing Department of Labor grants and agreements.

Establishes: Part 29-70

LEGISLATION

The Joint Resolution on American Indian Religious Freedom

42 U.S.C. 1996, 92 Stat. 469, Pub. L. 95-341. S.J. Res. 102, April 3, 1978, the text of which was noted in 6 AM. INDIAN L. REV. 255, 256 (1978), was introduced in the House of Representatives as H.J. Res. 738. This resolution passed the House July 18, 1978 as an amendment to S.J. 102, in which the Senate concurred on July 27, 1978. The effective date of this joint resolution was August 1978.

Indian Child Welfare Act. 92 Stat. 3069, Pub. L. 95-608

This bill is designed to stop abusive child-welfare practices that cause unwarranted Indian parent-child separation, to eliminate discrimination that prevents Indian families from becoming foster or adoptive families, and to furnish Indian communities with comprehensive child-welfare and family service programs. The Act is intended to assure that Indian families receive a full and fair hearing when the issue is child placement. It also sets priorities in child placement, with top priority to members of the child's extended family, and other preferences to members of the Indian child's tribe, to homes licensed by Indian tribes or maintained by Indian people, and to institutions operated by Indian tribes and organizations. In addition, the Act authorizes the Secretary of the Interior to assist Indian tribes in establishing and operating Indian family development programs to prevent the break-up of Indian families and ensure that Indian children are removed from their families only as a last resort.

History: Introduced in Senate May 3, 1978, by Senator Udall and referred to the Committee on Interior and Insular Affairs. The en-

tire bill was reported amended July 24, 1978, and referred to the Committee of the Whole House on the State of the Union. See Report No. 95-1386. Passed both Houses of Congress by voice votes on October 14-15, 1978. Signed into law by President Carter on Nov. 8, 1978.

Education Amendments of 1978, Title XI, "Indian Education," 20 U.S.C. 2701, 92 Stat. 2313, Pub. L. 95-561

Part A, "Assistance to Local Educational Agencies," in general amends Pub. L. 81-874, which is an HEW program commonly referred to as the Impact Aid Act. *Section 1101* establishes procedures for the calculation of entitlements to be received by local education agencies with respect to Indian children; requires local education agencies to establish certain policies and procedures guaranteeing more tribal and parental involvement in the education of their children as a condition to receiving payment of such entitlements; and establishes procedure by which any tribe, or its designee, may file a complaint with the Department of Health, Education, and Welfare regarding any action of a local educational agency taken to fulfill these requirements. *Section 1102* establishes procedure to be followed by the Secretary of the Interior and Indian tribes in developing a formula for the equitable distribution of any supplemental program funds. *Section 1103* requires the Secretary of the Interior to make payments of any unexpended funds appropriated for basic educational support under the Act of November 2, 1921, 25 U.S.C. 13, within 30 days after this 1978 Act takes effect, to any school that has received notification of the award of a basic support contract or grant.

Part B, "Bureau of Indian Affairs Program."

Section 1121 requires the Secretary of the Interior to establish proposed minimum academic standards for the basic education of Indian children for distribution to the tribes, and to establish final standards after allowing comment by the tribes; such standards will apply at all BIA schools, and the contract schools who so request; a tribal governing body is also authorized to waive the standards if they deem them inappropriate, and establish revised minimum educational standards subject to the approval of the Secretary. *Section 1122* requires the Secretary, in consultation with the Department of Health, Education, and Welfare and various Indian organizations and tribes, to establish national criteria for dormitory arrangements of Indian students provided in BIA and contract schools. *Section 1125* requires the BIA to bring all of its schools, facilities, and dormitories used in the education of Indian students into compliance with all applicable government

and tribal health and safety standards. *Section 1130* states that the overall BIA policy shall be to facilitate Indian control of all affairs relating to Indian education. *Section 1131* declares that other sections of the United States Code relating to appointment, promotion, and removal of Civil Service employees shall not apply to education personnel employed by the BIA. The Secretary of the Interior is required to establish regulations governing criteria and conduct for such education personnel. This provision is designed to increase control and accountability at the agency or area level for the management of such activity. *Section 1135* requires the Secretary to institute a policy for recruitment of qualified Indian educators and a detailed plan to promote such employees within the BIA.

Part C, "Indian Education Provisions,"

Section 1142 amends Section 302(a) of the Indian Elementary and Secondary School Assistance Act to recognize "culturally related needs of Indian students." *Section 1145* amends Section 307(b) of the same Act to empower the Commissioner of Education to reallocate funds awarded to eligible local educational agencies, thereby ensuring their maximum utility. *Section 1146* sets out the criteria that must be met by any tribal school in order to be deemed a local educational agency under Section 303(a) of the Indian Elementary and Secondary School Assistance Act. *Section 1148* amends Section 453 of the Indian Education Act by declaring minimum information that must be requested by the Commissioner of Education in determining a child's eligibility for entitlement under Part A of the act. *Section 1149* requires the Commissioner to conduct an audit of a sample of all the school districts receiving funds under Part A of the Indian Education Act. Penalties for falsification of information on applications for funds are also stated.

History: Introduced in House as HR 15 on January 4, 1977, by Perkins of Kentucky. See H. Rep. No. 95-1137, House Committee on Education and Labor, May 11, 1978. Introduced in Senate as S. 1753 on June 24, 1977, by Senator Pell of Rhode Island. See Sen. Rep. No. 95-856, Committee on Human Resources, May 15, 1978. The bill passed the House July 13, 1978, and the Senate on August 24, 1978, as amended, in lieu of S. 1753. See H. Rep. No. 95-1753, Committee of Conference, October 10, 1978. The Senate agreed to the conference report October 12, 1978, and the House concurred October 15, 1978. The bill became law November 1, 1978.

Creek Nation of Oklahoma—Certain Lands, 92 Stat. 412, Pub. L. 95-329.

This act declared certain federally owned land known as the Yardeka School land to be held in trust for the Creek Nation of Oklahoma. The Act concerns five acres of land in McIntosh County, Oklahoma.

History: Introduced in Senate by Senator Bartlett as S. 947. Referred to Senate Committee on Indian Affairs. See Sen. Rep. No. 95-238. Passed Senate June 9, 1977. No companion bill in the House. Senate bill introduced in the House on June 10, 1977. Referred to Committee on Interior and Insular Affairs. See H. Rep. No. 95-1305. Passed House July 17, 1978. Act became law July 28, 1978.

Arapaho Indian Tribe—Oklahoma—Land Trusts, 92 Stat. 407, Pub. L. 95-327.

This Act declared approximately 107 acres of land of the United States situated in the state of Oklahoma to be held in trust by the United States for the Cheyenne-Arapaho Tribes of Oklahoma, and authorized the Secretary of the Interior to accept conveyance from the Cheyenne-Arapaho Tribes of certain other lands in Oklahoma to be held in trust by the United States for such tribes.

History: Introduced in Senate by Senator Bartlett as S. 1291. Referred to Senate Committee on Indian Affairs. See Sen. Rep. No. 95-239. No companion bill in the House. Senate bill introduced in the House on June 10, 1977. Referred to House Committee on Interior and Insular Affairs. See H. Rep. No. 95-1306. Bill passed Senate June 9, 1977, and House July 17, 1978. Act became law July 28, 1978.

Rhode Island Indian Claims Settlement Act, 92 Stat. 813, Pub. L. 95-395.

This Act provides for the extinguishment of certain Indian land claims in the state of Rhode Island and Providence Plantations.

History: Introduced in Senate by Senator Pell as S. 3153 on May 25, 1978. Referred to Senate Committee on Indian Affairs. See Sen. Rep. No. 95-972 accompanying S. 3153. Introduced in House by Beard of Rhode Island as H.R. 12860 on May 25, 1978. Referred to House Committee on Interior and Insular Affairs. See H. Rep. 95-1453. Bill passed Senate July 21, 1978. Differing bill passed House September 12, 1978, in which the Senate concurred September 15, 1978. Act became law September 30, 1978.

Umatilla Indian Reservation—Oregon—Inheritance of Trust Lands. 25 U.S.C. 463d, 92 Stat. 202, Pub. L. 95-264.

This Act governs the right to inherit trust or restricted land on the Umatilla Indian Reservation to the extent any laws of descent of Oregon are inconsistent.

History: HR 2540. See H. Rep. No. 95-820, House Committee on Interior and Insular Affairs. Senate Rep. No. 95-718, Senate Select Committee on Indian Affairs. Bill passed House February 6, 1978, and the Senate April 5, 1978. Act became law April 18, 1978.